

(2020) 11 NCLT CK 0008

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Interlocutory Application No. 3680 Of 2020 In Company Petition No. (IB)-1265(ND) Of 2019

Hemant Sharma And Anr

APPELLANT

Vs

Moser Baer Electronic Limited And Anr

RESPONDENT

Date of Decision : 19-11-2020

Acts Referred:

Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 6, 12, 13
Insolvency And Bankruptcy Code, 2016 — Section 9, 12, 12(2), 12(3), 14, 31, 33, 33(1), 33(5), 33(7), 34, 56, 30(6)
Income Tax Act, 1961 — Section 178

Citation : (2020) 11 NCLT CK 0008

Hon'ble Judges : Dr. Deepti Mukesh, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Milan Singh, Swarnedu Chatterjee

Final Decision : Disposed Of

Judgement

Sumita Purkayastha (Technical)

1. This is an application filed by the Resolution Professional under Section 33 (1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as

the "Code") for order of liquidation of the corporate debtor,Moser Baer Electronic Limited.

2. The facts in brief are that the an application for Corporate Insolvency Resolution Process was preferred by Autonix Lightning Private Limited,

herein the Operational Creditor in the matter of Moser Baer Electronic Limited, herein the Corporate Debtor, under Section 9 of the IBC on account

of default. The Adjudicating Authority vide order dated 17.09.2019 admitted the said application and appointed Mr. Hemant Sharma as the Interim

Resolution Professional of the Corporate Debtor.

3. The IRP issued a Public Announcement dated 19.07.2019 under Regulation 6 of IBBI Regulations and invited claims from the creditors of the

Corporate Debtor. On receiving the claims the IRP constituted the CoC of the Corporate debtor. On first meeting of CoC held on 4.08.2019 the IRP

was appointed as the Resolution Professional.

4. The second meeting of COC was held on 30.09.2019 wherein the members decided that the Applicant shall proceed to invite expression of interest

from the prospective Resolution Applicants in prescribed Form-G and publication was made in Business Standard (English and Hindi) Delhi NCR

Edition on 01.10.2019. The last date of submission of Expression of Interest was decided to be 16.10.2019. The third meeting of CoC was held on

19.10.2019 wherein it was apprised to the CoC members that no interest has been received from any prospective Resolution Applicant till the last date

of submission. The committee was of the view that it would be prudent to take a commercial view and another publication (Form-G) was made in

Business Standard (English and Hindi) Delhi NCR Edition on 21.10.2019. In the fourth meeting of the CoC it was informed that and Expression of

Interest has been received from one Prospective Resolution Applicant viz. East India Udyog Limited. Subsequently the Resolution Professional issued

Request for Resolution Plan along with the Evaluation Matrix to the Prospective Resolution Applicant on 19.11.2019. The Prospective Resolution

Applicant was asked to submit its resolution plan on or before 19.12.2019, however the Prospective Resolution Applicant vide its Email dated

30.11.2019 withdrew its interest from the submission of Resolution Plan in the instant matter.

5. The Resolution Professional, in the Fifth CoC meeting held on 09.01.2020 apprised the members that till date no Resolution Plan has been received

in the instant matter. The members further voted in favour of extension of the CIRP period by another 90 days as the limit of 180 days for completion

of the CIRP was going to end on 13.01.2020 for which the Resolution Professional filed an application under section 12(3) read with 12(2) of the IBC,

which was allowed by the Adjudicating Authority vide order dated 15.01.2020. Further the committee was of the view that it would be prudent to take

a commercial view and another publication (Form-G) was made in Business

Standard (English and Hindi) Delhi NCR Edition on 30.01.2020 inviting Expression of Interest.

6. The Sixth CoC meeting was held on 27.08.2020 wherein the Resolution Professional apprised the committee that pursuant to the Invitation of Expression of Interest published on 30.01.2020, and Expression of Interest received from one Prospective Resolution Applicant viz. LMJ Services

Limited. Subsequently the Resolution Professional issued Request for Resolution Plan along with the Evaluation Matrix to the Prospective Resolution

Applicant. The Prospective Resolution Applicant was asked to submit its resolution plan on or before 25.0.2020.

7. It was further apprised by the Resolution Professional to the CoC members that no resolution plan was received by the Prospective Resolution

Applicant and that the time line of 270 days for completion of the CIRP of the Corporate Debtor ended on 13.04.2020. The CoC members passed the

resolution to initiate the Liquidation process of the Corporate Debtor with 100% of votes.

8. The CIRP of 270 days in the present matter has been expired and due to non-receipt of any Resolution Plan within the period of CIRP of 270 days,

hence this application has been filed under the provisions of section 33 of IBC, 2016. The relevant sub-section 1 of section 33 is reproduced hereunder

;

â??33. (1) Where the Adjudicating Authority, â?

a. before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution

process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution

plan under sub-section (6) of section 30; or

b. rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shallâ?

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.â??

9. The Resolution Professional represents that valuation report as required to be obtained under the provisions of IBC, 2016 from the registered valuer

in relation to the fair value of the assets of the corporate debtor as well as its liquidation value has been duly done. The fair value of assets and

liquidation value as per date 20.07.2020 is Rs. 384.88 (in lakhs) and Rs. 105.40 (in lakhs) respectively.

10. This Tribunal in the circumstances taking into consideration the provisions of law as well as on facts hereby orders for liquidation of the corporate

debtor and in the circumstances the corporate debtor stands liquidated and the incidence of liquidation to follow, on and from the date of this order in

terms of the provisions of IBC, 2016 and more particularly as given in Chapter III of IBC, 2016 and also in terms of Insolvency and Bankruptcy

(Liquidation Process) Regulations, 2017 along with the following directions:

a. Mr. Hemant Sharma Resolution Professional holding registration no. IBBI/ IPA-002/IP-N00015/2016-17/10019, is appointed as Liquidator and has

given consent to act as the liquidator vide written communication dated 27.08.2020, under section 34 of the Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016.

b. Mr. Hemant Sharma is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the

Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

c. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy

Board of India;

d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly in

relation to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of

liquidation

e. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh

Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

f. This order is deemed to be a notice of discharge to the officers, employees and

the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

g. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and

Bankruptcy Code, 2016 and in accordance with the relevant regulations.

h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as

per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

11. Copy of this order be sent to the operational creditor, corporate debtor and the Liquidator for taking necessary steps.

12. IA.3680(ND) /2020 filed in IB 1265 (ND)/ 2019 is disposed of in the aforesaid terms.